



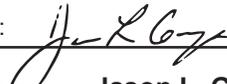
Amendment No. 2
To
Contract No. GA170000048
For
Bulk Liquid Alum
Between
Chameleon Industries, Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be July 21, 2020, through July 20, 2021. One option remains.
- 2.0 The total contract amount is increased by \$34,692.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 07/21/2017 – 07/20/2019	\$69,384.00	\$69,384.00
Amendment No. 1: Option 1 – Extension 07/21/2019 – 07/20/2020	\$34,692.00	\$104,076.00
Amendment No. 2: Option 2 – Extension 07/21/2020 – 07/20/2021	\$34,692.00	\$138,768.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date:  **18 May 2020**

Printed Name: **Jason L. Garza**
Authorized Representative

Chameleon Industries, Inc.
P.O. Box 853027
Mesquite, Texas 75185-3027
(972) 880-1493
chino@chameleonindustriesinc.com
figarza@hotmail.com
Chino Garza

Sign/Date: **Matthew Duree** 
Digitally signed by
Matthew Duree
Date: 2020.06.26
08:51:29 -05'00'

Matthew Duree
Procurement Manager
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



City of Austin

Purchasing Office

P.O. Box 1088, Austin, TX 78767

July 20, 2017

Chameleon Industries Inc.

Jason L. Garza

Vice President

P.O. Box 853027

Mesquite, TX 75185

jasonlgarza@gmail.com/jgarza@chameleonindustriesinc.com

Dear Mr. Garza:

The City of Austin approved the execution of a contract with your company for Bulk Liquid Alum in accordance with the referenced solicitation.

Responsible Department:	Austin Water
Department Contact Person:	Lydia Torres
Department Contact Email Address:	Lydia.torres@austintexas.gov
Department Contact Telephone:	512-972-0329
Project Name:	Bulk Liquid Alum
Contractor Name:	Chameleon Industries Inc.
Contract Number:	GA170000048
Contract Period:	July 21, 2017 to July 20, 2019
Dollar Amount	\$69,384.00
Extension Options:	Three (3) Twelve (12) month extensions
Extension Amount:	\$34,692.00 per extension
Requisition Number:	RQM 2200 17032300383
Solicitation Type & Number:	IFB ISR0023
Agenda Item Number:	N/A
Council Approval Date:	ADMIN

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

Irene Sanchez-Rocha
Procurement Specialist III
City of Austin
Purchasing Office

cc: Lydia Torres, Contract Management Specialist III, AW

**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)
AND
Chameleon Industries Inc. (“Contractor”)
for
Bulk Liquid Alum
GA170000048**

The City accepts the Contractor’s Offer (as referenced in Section 1.1.3 below) for the above requirement and enters into the following Contract.

This Contract is between Chameleon Industries Inc. having offices at PO Box 853027, Mesquite, TX 75185 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City (“Effective Date”).

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number IFB ISR0023.

1.1 This Contract is composed of the following documents:

- 1.1.1 This Contract
- 1.1.2 The City’s Solicitation, IFB, ISR0023 including all documents incorporated by reference
- 1.1.3 Chameleon Industries Inc. Offer, dated July 5, 2017, including subsequent clarifications

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 This Contract
- 1.2.2 The City’s Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference
- 1.2.3 The Contractor’s Offer as referenced in Section 1.1.3, including subsequent clarifications.

1.3 Term of Contract. The Contract will be in effect for an initial term of twenty-four (24) months and may be extended thereafter for up to three (3) twelve (12) month extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

1.4 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$69,384.00 for the initial Contract term and \$34,692.00 for each extension option as indicated in the Bid Sheet, IFB Section 0600. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

1.5 Quantity of Work. There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order

1.6 Clarifications and Additional Agreements. The following are incorporated into the Contract.

- 1.6.1 N/A

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

Chameleon Industries Inc.

CITY OF AUSTIN

Jason L. Garza
Printed Name of Authorized Person

Irene Sanchez-Rocha
Printed Name of Authorized Person


Signature


Signature

Vice President
Title:

Procurement Specialist III
Title:

20 July 2017
Date:

7/20/17
Date:



CITY OF AUSTIN, TEXAS
Purchasing Office
INVITATION FOR BID (IFB)
OFFER SHEET

SOLICITATION NO: ISR0023	COMMODITY/SERVICE DESCRIPTION: BULK LIQUID ALUM
DATE ISSUED: June 12, 2017	PRE-BID CONFERENCE TIME AND DATE: N/A
REQUISITION NO.: RQM 2200 17032300383	LOCATION: N/A
COMMODITY CODE: 2698406	BID DUE PRIOR TO: July 6, 2017 at 2:00 p.m.
FOR CONTRACTUAL AND TECHNICAL ISSUES CONTACT THE FOLLOWING AUTHORIZED CONTACT PERSON:	BID OPENING TIME AND DATE: July 6, 2017 at 3:00 p.m.
Irene Sanchez-Rocah	LOCATION: MUNICIPAL BUILDING, 124 W 8 th STREET RM 308, AUSTIN, TEXAS 78701
<u>Procurement Specialist III</u> Phone: (512) 974-2554 E-Mail: irene.sanchez-rocha@austintexas.gov	

LIVE BID OPENING ONLINE:

Georgia Billela
Procurement Specialist III
Phone: (512) 974-2939
E-Mail: Georgia.billela@austintexas.gov

For information on how to attend the Bid Opening online, please select this link:

<http://www.austintexas.gov/department/bid-opening-webinars>

When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below:

Address for US Mail (Only)	Address for FedEx, UPS, Hand Delivery or Courier Service
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation # ISR0023	Purchasing Office-Response Enclosed for Solicitation # ISR0023
P.O. Box 1088	124 W 8 th Street, Rm 308
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

NOTE: Offers must be received and time stamped in the Purchasing Office prior to the Due Date and Time. It is the responsibility of the Offeror to ensure that their Offer arrives at the receptionist's desk in the Purchasing Office prior to the time and date indicated. Arrival at the City's mailroom, mall terminal, or post office box will not constitute the Offer arriving on time. See Section 0200 for additional solicitation instructions.

All Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

The Vendor agrees, if this Offer is accepted within 120 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying Offer.

SUBMIT 1 ORIGINAL, AND 1 ELECTRONIC COPY OF YOUR RESPONSE

*****SIGNATURE FOR SUBMITTAL REQUIRED ON PAGE 3 OF THIS DOCUMENT*****

This solicitation is comprised of the following required sections. Please ensure to carefully read each section including those incorporated by reference. By signing this document, you are agreeing to all the items contained herein and will be bound to all terms.

SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	*
0200	STANDARD SOLICITATION INSTRUCTIONS	*
0300	STANDARD PURCHASE TERMS AND CONDITIONS	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	8
0500	SPECIFICATION	4
0600	BID SHEET – Must be completed and returned with Offer	2
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete & return	2
0700	REFERENCE SHEET – Complete and return if required	2
0800	NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION–Complete and return	2
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION	*
0835	NONRESIDENT BIDDER PROVISIONS – Complete & return	1
0900	SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM – Complete & return	1
0905	SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN – Complete and return if applicable	3

*** Documents are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of the * Sections are available on the Internet at the following online address:**

http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office located in the Municipal Building, 124 West 8th Street, Room #308 Austin, Texas 78701; phone (512) 974-2500. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.

INTERESTED PARTIES DISCLOSURE

In addition, Section 2252.908 of the Texas Government Code requires the successful offeror to complete a Form 1295 “Certificate of Interested Parties” that is signed and notarized for a contract award requiring council authorization. The “Certificate of Interested Parties” form must be completed on the Texas Ethics Commission website, printed, signed and submitted to the City by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury prior to final contract execution.

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: Chameleon Industries Inc.

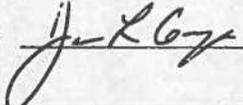
Company Address: PO Box 853027

City, State, Zip: Mesquite, TX 75185

Federal Tax ID No. [REDACTED]

Printed Name of Officer or Authorized Representative: Jason L. Garza

Title: Vice President

Signature of Officer or Authorized Representative: 

Date: 5 July 2017

Email Address: jgarza@chameleonindustriesinc.com

Phone Number: 513.615.3808

*** Completed Bid Sheet, section 0600 must be submitted with this Offer Sheet to be considered for award**

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the Deliverables under reservation and no tender of a bill of lading will operate as a tender of Deliverables.
5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. **WORKFORCE**

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

11. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. **INVOICES:**

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

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STANDARD PURCHASE TERMS AND CONDITIONS**

13. **PAYMENT:**

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming Deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

14. **TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

**CITY OF AUSTIN
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STANDARD PURCHASE TERMS AND CONDITIONS**

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. FINAL PAYMENT AND CLOSE-OUT:

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. AUDITS and RECORDS:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. Records Retention:
 - i. Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.
 - ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City
 - iii. The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.
- C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

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18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

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20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.
21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
- A. Recycled Deliverables shall be clearly identified as such.
 - B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be

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required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

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30. **DELAYS:**

- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. **INDEMNITY:**

- A. Definitions:
 - i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
 - ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

32. **INSURANCE:** (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

- A. General Requirements.
 - i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
 - ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the

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City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the

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Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY:** In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

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39. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
40. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
41. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
43. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
44. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
45. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
46. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

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48. DISPUTE RESOLUTION:

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

49. JURISDICTION AND VENUE: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

50. INVALIDITY: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

51. HOLIDAYS: The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11

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Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

52. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

53. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

54. **EQUAL OPPORTUNITY**

A. **Equal Employment Opportunity:** No Contractor, or Contractor’s agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor’s suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

B. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor’s agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

55. **INTERESTED PARTIES DISCLOSURE**

As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 “Certificate of Interested Parties” as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the “Certificate of Interested Parties” to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

56. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)**

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The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by email to irene.sanchez-rocha@austintexas.org no later than close of business five (5) business days before the bid due date.

2. **ALTERNATE OFFERS:** (reference paragraph 7A in Section 0200)

Alternate Offers will NOT be considered.

3. **INSURANCE:** Insurance is required for this solicitation.

A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767

B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
- ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.

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- (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
 - iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
 - C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.
4. **TERM OF CONTRACT:**
- A. The Contract shall be in effect for an initial term of twenty-four months and may be extended thereafter for up to three additional twelve month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.
 - B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).
 - C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
 - D. Prices are firm and fixed for the first twelve months. Thereafter, ~~price changes are subject to the~~ Economic Price Adjustment provisions of this Contract.
5. **QUANTITIES:** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.
6. **DELIVERY REQUIREMENTS:**

Location:
Harris Branch WWTP – One 1,000 gallon tank
Attn: Allen Reich,
11800 ½ Landsdowne Road
Austin, Texas 78754

Days: Monday – Friday 7:00 a.m. to 1:00 p.m.
Austin Water Utility
Attn: Allen Reich
10621 Blue Bluff Road
Austin Texas 78653

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(512) 972-1434 allen.reich@austintexas.gov
 Location:
 Lost Creek WWTP – Future Installation
 Attn: Allen Reich
 6104 ½ Turtle Point
 Austin Texas 78746
 (512) 972-1434 allen.reich@austintexas.gov

(512) 972-1434 allen.reich@austintexas.gov
 Days: Monday – Friday 7:00 a.m. to 1:00 p.m.
 River Place WTP – One 5,000 gallon tank
 Attn: Greg Sundahl
 4014 River Place Blvd
 Austin Texas 78730
 (512) 972-0520 greg.sundahl@austintexas.gov

- A. Delivery is to be made within five calendar days after the order is placed (either verbally or in writing). All orders must be shipped complete unless arrangements for partial shipments are made in advance.
- B. The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.
- C. The Contractor shall confirm the quantity to be shipped on all orders within two (2) hours of notification by phone from the City.
- D. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays (see paragraph 51 in Section 0300).

7. INVOICES and PAYMENT: (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

	City of Austin		
Department	Austin Water River Place Water Treatment Plant		
Attn:	Greg Sundahl		
Address	3616 S 1 st St		
City, State Zip Code	Austin, Texas 78704		

	City of Austin		
Department	Austin Water Harris Branch, Lost Creek and Northeast		
Attn:	Allen Reich		
Address	7113 FM 969		
City, State Zip Code	Austin, Texas 78724		

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

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8. **RETAINAGE:** The City will withhold _____ percent (%) retainage until completion of all work required by the Contract. The Contractor's invoice shall indicate the amount due, less the retainage. Upon final acceptance of the work, the Contractor shall submit an invoice for the retainage to the City and payment will be made as specified in the Contract. Payment of the retainage by the City shall not constitute nor be deemed a waiver or release by the City of any of its rights and remedies against the Contractor for recovery of amounts improperly invoiced or for defective, incomplete or non-conforming work under the Contract.
9. **HAZARDOUS MATERIALS:**
- A. If this Solicitation involves hazardous materials, the Offeror shall furnish with the Offer Material Safety Data Sheets (MSDS), (OSHA Form 20), on all chemicals and hazardous materials specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.
 - B. Failure to submit the MSDS as part of the Offer may subject the Offer to disqualification from consideration for award.
 - C. The MSDS, instructions and information required in paragraph "A" must be included with each shipment under the contract.
10. **RECYCLED PRODUCTS:**
- A. The City prefers that Offerors offer products that contain recycled materials. When a recycled product is offered by the Offeror, the Offeror must state in their Offer the percentage of the product that is recycled and must include a list of the recycled materials that are contained in the product.
 - B. The recycled content of paper products offered to the City shall be in accordance with the Federal Environmental Protection Agency's Recycled Product Procurement Guidelines. These guidelines are available at <http://www.epa.gov/cpg/> .
 - C. Contract award for paper products will be made for recycled products unless the cost is more than 10% above the lowest price for non-recycled paper products as required in the City's Comprehensive Recycling Resolution.
11. **PUBLISHED PRICE LISTS:**
- A. Offerors may quote using published price lists in the following ways:
 - i. Offerors may quote one discount from a Published Price List for all offered items to be covered in the Contract. The discount must remain firm during the life of the Contract.
 - ii. Offerors may quote their dealer cost, plus a percentage markup to be added to the cost. The percentage markup must remain firm during the life of the contract.
 - B. Two (2) copies of the list upon which the discounts or markups are based shall be submitted with the Offer. All price lists identified in the Offer shall clearly include the Offeror's name and address, the solicitation number, prices, title of the discount and number, and the latest effective date of the price list. If the Offer is based on a discount or markup on a manufacturer's price list, the price list must also include the manufacturer's name, the manufacturer's latest effective date, and the manufacturer's price schedule. All price lists submitted become part of the Offer.
 - C. The price list may be superseded or replaced during the Contract term only if price revisions are the result of the manufacturer's official price list revision. Written notification from the Contractor of price changes, along with two (2) copies of the revised list must be submitted to the Buyer in the Purchasing Office with the effective date of change to be at least _____ calendar days (30 unless a

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different period is inserted) after written notification. The City reserves the right to refuse any list revision.

- D. The discounts or markups on equipment rental, material, supplies, parts, and contract services shall be fixed throughout the term of the Contract, and are not subject to increase.
- E. Failure to submit written notification of price list revisions will result in the rejection of new prices being invoiced. The City will only pay invoices according to the last approved price list.

12. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):

- A. Access to Austin Water building by the Contractor, all subcontractors and their employees will be strictly controlled at all times by the City. Security badges will be issued by the Department for this purpose. The Contractor shall submit a complete list of all persons requiring access to the Austin Water building at least thirty (30) days in advance of their need for access. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's submittal.
- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) days of the receipt of notification of denial.
- C. Contractor personnel will be required to check in at the security desk when entering or leaving the Austin Water building and security badges must be on display at all times when in the building. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.
- D. The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be inside the building and the areas where they will be working. Only persons previously approved by the City for the issuance of security badges will be admitted to the building.
- E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and subcontractors are kept fully informed as to these requirements.
- F. Due to developments in national security, Austin Water needs to know who is delivering bulk chemicals to our plants and ensure orders are accurate. The Vendor shall FAX or email the "Chemical Delivery Notice" form on company letterhead, to the anticipated delivery site upon receiving a purchase order and dispatching driver(s) for delivery to the plants. The driver must provide a picture ID upon every delivery.

All person(s) and companies transporting HM (Hazardous Material) for the City of Austin / Austin Water must comply with the Federal Motor Carrier Safety Regulations, specifically 49CFR part 383 which governs commercial driver license standards requirements and penalties.

Hazardous Material is defined under 49 CFR part 383.5 as:

Any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73

13. ECONOMIC PRICE ADJUSTMENT:

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first twelve months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price

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adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed twenty-five percent (25%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.

- B. **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- C. **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- D. **Indexes:** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
- i. The following definitions apply:
 - (1) **Base Period:** Month and year of the original contracted price (the solicitation close date).
 - (2) **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.
 - (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
 - (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.
 - (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.
 - ii. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
 - (1) Utilize final Compilation data instead of Preliminary data
 - (2) If the referenced index is no longer available shift up to the next higher category index.
 - iii. **Index Identification:** Complete table as they may apply.

Weight % or \$ of Base Price: 100%	
Database Name: Bureau of Labor Statistics	
Series ID: PCU325998325998A	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: National	
Description of Series ID: Other miscellaneous chemical product mfg. Water treating compounds	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: all	

- E. **Calculation:** Price adjustment will be calculated as follows:

Single Index: Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date

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Equals Change Factor

Multiplied by the Base Rate

Equals the Adjusted Price

- F. If the requested adjustment is not supported by the referenced index, the City, at its sole discretion, may consider approving an adjustment on fully documented market increases.
14. **INTERLOCAL PURCHASING AGREEMENTS:** (applicable to competitively procured goods/services contracts).
- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
- B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.
15. **WORKING ON OR NEAR ENGERGIZED EQUIPMENT – ARC FLASH PROTECTION (reference Section 0300 Paragraph 11, Compliance With Health, Safety, and Environmental Regulations):** Contractor's employees shall wear at all times the proper personal protective equipment and clothing required for the head, face, torso, arms, hands, and lower body that provides a minimum Arc Thermal Protection Value (ATPV) of 12 calories per square centimeter (cal/cm²) when working on or near energized electrical equipment, or greater, if required by the NFPA Standard 70E and/or Article 410 of the NESC for the work being performed.
16. **OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the Deliverables.
- A. **Patents:** As to any patentable subject matter contained in the Deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
- B. **Copyrights:** As to any Deliverable containing copyrighted subject matter, the Contractor agrees that upon their creation, such Deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such Deliverables, provided however, that nothing in this Paragraph 36 shall negate the City's sole or joint ownership of any such Deliverables arising by virtue of the City's sole or joint authorship of such Deliverables. Should by operation of law, such Deliverables not be considered work made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of Austin) all worldwide right, title, and interest in and to such Deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such Deliverables to the City or at such other time as the City may request.
- C. **Additional Assignments:** The Contractor further agrees to, and if applicable, cause each of its employees to execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters

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patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns, and nominees, the sole and exclusive right, title, and interest in and to the Deliverables, The Contractor's obligations to execute acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 36 A., B., and C. shall continue after the termination of this Contract with respect to such Deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the Deliverables, but should arise to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph above.

17. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Lydia Torres-Rodriguez

Contract Management Specialist III

(512) 972-0329

Lydia.torres@austintexas.gov

CITY OF AUSTIN, TEXAS
PURCHASE SPECIFICATION
FOR
BULK LIQUID ALUM

1.0 PURPOSE

- 1.0 This specification establishes the minimum requirements for a supply agreement for the purchase of Liquid Alum in bulk quantities for Austin Water. These specifications include Purpose, Applicable Specifications, Material Requirements, Vendor Requirements, Other Requirements and Security.
- 1.2 The liquid alum will be used by AW water and wastewater treatment plant locations.

2.0 APPLICABLE SPECIFICATIONS

The Contractor shall ensure the liquid alum complies with Federal, State and Local Laws, ordinances, guidelines and AW guidelines for this type of product.

- 2.1 Compliance with National Sanitation Foundation (NSF) / American National Standards Institute (ANSI) 60 (National Sanitation Foundation/American National Standards Institute) and the American Water Works Association Standard AWWA B403.
- 2.2 Environmental Protection Agency (EPA) standards that apply to both private industry and governmental agencies.
- 2.3 Occupational Safety and Health Administration (OSHA) safety requirements
- 2.4 City of Austin ordinances and regulations.
- 2.5 Where there is conflict, these specifications will govern

3.0 MATERIAL REQUIREMENTS

3.1 Liquid Alum

- NSF Standard 60 Certification
- Chemical Name: Aluminum Sulfate, Liquid 47-49%.

- 3.2 Contracts for Supply of Hazardous Materials. With respect to all contracts under which the Vendor will deliver a "hazardous material" for which a "Material Safety Data Sheet" ("MSDS") is required under Texas Health & Safety Code, Sec. 502.006, as amended, will provide, on or before the date of each delivery of the hazardous material, an electronic version of the most current "Material Safety Data Sheet" meeting the requirements set forth in Sec. 502.006, Texas Health & Safety Code. Each MSDS provided shall bear the date when it was last revised.

- 3.3 **The required electronic copy of the MSDS shall be transmitted to the following City email address: AWUMSDS@austintexas.gov**

- 3.4 Contractor shall provide the City with the required electronic copy of the Material Safety Data Sheet on or before the date of each delivery of the hazardous material.

4.0 VENDOR RESPONSIBILITY

- 4.1 The Vendor shall **submit with bid package**, a copy of current Federal DOT number.
- 4.2 Contractor shall accept orders by phone/fax/email, on an "as needed" basis. No partial shipment or backorder shall be allowed. Deliveries shall be made within 5 calendar days after receipt of the order. **A completed Chemical Delivery Form shall be submitted a minimum 4 hours prior to delivery.** Chemical delivery form included in this specification below.

- 4.3 Delivery shall be made on weekdays (except City of Austin holidays) between the hours of 7:00 a.m. and 1:00 p.m. Should the Vendor make delivery on any day other than the scheduled delivery date, the City will not be charged demurrage for any delays encountered in unloading the truck.
- 4.4 Although there is no minimum order quantity for this contract, the City anticipates orders of approximately 3,900 gallons per delivery.
- 4.5 The Contractor shall allow a minimum two (2) hour time requirement (within 7:00 a.m. and 1:00 p.m.) for transferring the Liquid Alum from the delivery tank truck to the City's storage tank without demurrage of additional truck standing time charges.
- 4.6 If a truck arrives (for a delivery) on a Saturday, Sunday, a holiday, or after 1:00 p.m. on a regular work day without the prior approval from the Plant Supervisor, AW will charge any and all overtime and call back expenses for unloading. Otherwise, the Contractor may decide that the truck will not be unloaded until normal working hours.
- 4.7 The Contractor shall be responsible for cleanup of any spillage or leakage during transportation and/or on the plant site due to defective pumping and/or unloading equipment and/or negligence of the driver at no additional charge to the City.
- 4.8 The Vendor shall establish a delivery date and time amenable to the Vendor and AW. The Vendor shall obtain sign-off on the City's Chemical Delivery form by an authorized AW employee on every delivery.
- 4.9 The City reserves the right to add/delete locations during the contract at no additional costs to the City.

5.0 OTHER REQUIREMENTS

- 5.1 **Manufacturer Data** – The Vendor shall indicate the manufacturer's name, name of the material and shall indicate the shipping address/location from where the material will be shipped. Contractor shall notify the City in writing throughout the life of the contract of any changes in manufacture, product name, location where the liquid alum is coming from, or trucking company used to deliver product. The Vendor shall submit written notification to the AW Contact Person. This is to be assured that the material is not repackaged and is shipped from an NSF (National Sanitation Foundation) approved manufacturer or by a NSF approved trucking company.
- 5.2 **Vendors shall be responsible for contacting the City and requesting a site visit to ensure delivery conditions are acceptable PRIOR to submitting a bid. Otherwise, the City will assume that the delivery conditions are acceptable to the Vendor submitting a bid.**
- 5.3 AW has had issues with Contractors changing trucking companies and the new truck drivers are not aware of the specifications. Therefore, if the Contractor changes the trucking company to one that is different than the one listed on the bid sheet, the Contractor must notify AW, in writing, at least one week prior to any deliveries made by the new company.

6.0 DELIVERABLES/MILESTONES

Deliverables/Milestones	Description	Timeline (due/completion date, reference date, or frequency)	Performance Measure/ Acceptance Criteria	Contract Reference/ Section
Chemical Delivery Form	Completed and signed Chemical Delivery Form	Submitted minimum 4 hours prior to delivery	95%	4.2
MSDS	Prior to delivery	On or before the date of each delivery	95%	4.3

Delivery	Delivery of Bulk Liquid Alum	Delivery within 5 calendar days	90%	4.3
Invoice	Itemized invoice sent accordingly	Submit invoice within 3 business days	90%	7.0

7.0 INVOICING

- 7.1 Vendor invoices shall be submitted within 3 business days after each delivery to the Plant where the delivery was made.

River Place Water Treatment Plant:
 Greg Sundahl greg.sundahl@austintexas.gov
 Austin Water – South Service Center
 3616 S 1st St
 Austin, Texas 78704
 Office: 512-972-0556 FAX: 512-972-0512

Harris Branch, Lost Creek and Northeast:
 Allen Reich allen_reich@austintexas.gov
 Austin Water - Walnut Creek WWTP
 7113 FM 969
 Austin, Texas 78724
 Office: 512-972-1434

8.0 CITY REQUIREMENTS

- 8.1 The City's AW Contract Manager or designee will place the order and provide a delivery date and quantity.
- 8.2 The City at its discretion may terminate the contract for a pattern of consistent failure to perform the services as specified in this solicitation. This shall be defined as an on-going pattern of minor instances or one (1) major instance, of a failure to take corrective action that is deemed by the City as necessary.
- 8.3 Failure to provide the City with the required electronic copy of the Material Safety Data Sheet on or before the date of each delivery of the hazardous material may constitute grounds for termination of the contract and may result in debarment from further participation in the City's procurement processes.
- 8.4 The City at its discretion may terminate the contract for failure to provide proof of required insurance, and failure to keep all required insurance in force through the term of the Contract including any extension(s).
- 8.5 The City Austin Water Contract Manager or designee will provide updated point of contact for this contract if any changes of personnel occur during the term of this contract.
- 8.6 Contractor and all contractor employees performing services here-under, are not, by this contract, constituted an agent or employee of the City. Accordingly Contractor and contractor employees understand and agree that they shall not be entitled to any of the rights and privileges established for employees of the City such as vacation, sick leave with pay, paid days off, life, accident and health insurance or severance pay upon termination of this contract. It is further expressly agreed and understood that the City will not withhold any sum due or payable by or on behalf of the Contractor as withholding for any law or requirement of any governmental body and that all such payments as may be required by law are the sole responsibility of the Contractor and the individual contractor employees.

**SECTION 0600 - BID SHEET
CITY OF AUSTIN
BULK LIQUID ALUM**

Chameleon Industries

SOLICITATION NO.: ISR0023

Special Instructions: Offerors must use this Bid Sheet to submit pricing. Be advised that exceptions taken or qualifying statements made to any portion of the solicitation may jeopardize acceptance of your Offer and may result in disqualification of the bid. The quantities listed are annual estimates and not a guarantee of actual volume. The City reserves the right to purchase more or less of these quantities as may be required during the Contract Terms. Quantities will be as-needed and specified by the City for each order.

Prices being submitted shall include ALL discounts, handling and shipping charges, FOB Destination.

A quote of '0' (zero) will be interpreted by the City as a no-charge (free) item and the City will not expect to pay for that item. A bid of 'no bid' will be interpreted by the City that the responder does not wish to quote on that item.

Failure to respond to each section of this quote sheet may result in disqualification of your quote.

ITEM NO	ITEM DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
1	Liquid Alum - Chemical Name: Aluminum Sulfate: Liquid 47%-49%	55,000	GAL	\$ 0.588	\$ 32,340
2	Liquid Alum - Chemical Name: Aluminum Sulfate: Liquid 47%-49%	4,000	GAL	\$ 0.588	\$ 2,352

TOTAL

Additional Products /Catalog Items or Services (PRICING FOR THIS SECTION WILL NOT BE USED TO DETERMINE AWARD).
Please provide any other products/catalog items or services you may provide the City and the prices you would charge. This information will not be used in the evaluation of the quote and is for informational purposes only. There is no guarantee of purchase.

Please list any additional products/catalog items or services your Company offers and the associated discount off retail price or mark-up to cost for the listed products or catalog items. A quote of zero ('0') will be interpreted by the City that the additional products/catalog items or services will be sold at the Manufacturer's Suggested Retail Price. A 'no quote' or blank entry will be interpreted by the City that your Company does not wish to provide additional products/catalog items or services. This information is for informational purposes only and will not be evaluated. The City does not guarantee the purchase of any additional products/catalog items or services.

**SECTION 0600 - BID SHEET
CITY OF AUSTIN
BULK LIQUID ALUM**

Chameleon Industries Inc.

ITEM NO.	DESCRIPTION OF OTHER SERVICES OR PRODUCTS	LATEST EFFECTIVE DATE OF PRICE LIST	DISCOUNT FROM OR MARKUP TO PRICE LIST
3	Percentage minimum markup or discount off catalogue/price list for parts: Indicate the markup or discount from Manufacturer's Suggested Retail Price.		$\frac{0}{\text{Discount}} \%$ <p align="center">or</p> $\frac{0}{\text{Markup}} \%$
4	Any requested additional service/ maintenance/repairs	\$ N/A	Price Per Hour
5	Other: N/A		

* Unless otherwise specified, Price may be quoted as a firm-fixed price or as a percentage discount from quoteder's regular fees.

Please check the boxes below as confirmation.

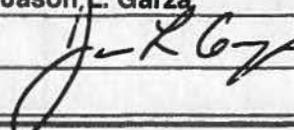
- Offer Sheet - required
- Bid Sheet (Section 0600) -required
- Local Business Presence Identification Form (Section 0605) - If applicable
- Reference Sheet (Section 0700) -required
- Nonresident Provisions (Section 0835)- required
- No Goals Form & No Goals Utilization Plan (Section 0900) - required
- Copy of return policy and credit memo procedures- if applicable
- I UNDERSTAND THAT FAILURE TO SUBMIT THE COMPLETED FORMS ABOVE MAY RESULT IN DISQUALIFICATION OF MY BID

DELIVERY TERMS: DELIVERY IS TO BE FOB DESTINATION, PREPAID AND ALLOWED

Delivery Method: _____

COMPANY NAME: Chameleon Industries Inc. DATE: 5 July 2017

PRINT NAME OF AUTHORIZED REPRESENTATIVE: Jason L. Garza REPRESENTATIVE TITLE: Vice President

SIGNATURE OF AUTHORIZED REPRESENTATIVE: 

PHONE/CELL NUMBER: 513.615.3808 Email address: jgarza@chameleonindustriesinc.com

Section 0605: Local Business Presence Identification

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this Contract. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE) TO BE CONSIDERED FOR LOCAL PRESENCE.

NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN (REFERENCE SECTION 0900).

USE ADDITIONAL PAGES AS NECESSARY

OFFEROR:

Name of Local Firm	N/A	
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years?	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm	N/A	
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years?	Yes	No

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Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm	N/A	
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

Section 0700: Reference Sheet

Responding Company Name Chameleon Industries Inc.

The City at its discretion may check references in order to determine the Offeror's experience and ability to provide the products and/or services described in this Solicitation. The Offeror shall furnish at least 3 complete and verifiable references. References shall consist of customers to whom the offeror has provided the same or similar services within the last 5 years. References shall indicate a record of positive past performance.

1. Company's Name City of Arlington Texas
Name and Title of Contact Sally U. Mills-Wright, John F Kubala Water Treatment Plant, Manager
Project Name Aluminum Sulfate - Water Treatment Plants
Present Address Mail Stop 42-0100 | 101 W. Abram St. | Arlington, TX 76010
City, State, Zip Code Arlington Texas 76010
Telephone Number (817) 575.8972 Fax Number ()
Email Address sally.mills@arlingtontx.gov

2. Company's Name City of Corsicana Texas
Name and Title of Contact Doug Spain, Navarro Mills Assistant Superintendent
Project Name Aluminum Sulfate, Polymer - Water Treatment Plant
Present Address 200 N. 12th St.
City, State, Zip Code Corsicana TX 75110
Telephone Number (903) 654.4896 Fax Number ()
Email Address dspain@ci.corsicana.tx.us

3. Company's Name Trinity River Authority - Euless
Name and Title of Contact David Harris, Chief Operator
Project Name Aluminum Sulfate, Polymer - Water Treatment Plant
Present Address 11201 Trinity Blvd.
City, State, Zip Code Euless, Texas 76040
Telephone Number (817) 267-4226 Fax Number ()
Email Address harrisd@trinityra.org

City of Austin, Texas

Section 0800

NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin

Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment,

including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

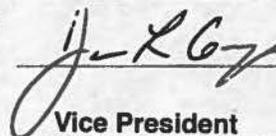
The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 5th day of July, 2017

CONTRACTOR

Chameleon Industries Inc.

Authorized Signature



Title

Vice President



Section 0835: Non-Resident Bidder Provisions

Company Name Chameleon Industries Inc.

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: Resident Bidder

- (1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
(2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: N/A Which State: _____

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: N/A

Section 0900: SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE)
PROCUREMENT PROGRAM
Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form**

SOLICITATION NUMBER: ISR0023
SOLICITATION TITLE: BULK LIQUID ALUM

In accordance with the City of Austin's Minority and Women-Owned Business Enterprises (M/WBE) Procurement Program (Program), Chapters 2-9A/B/C/D of the City Code and M/WBE Program Rules, this Solicitation was reviewed by the Small and Minority Business Resources Department (SMBR) to determine if M/WBE Subcontractor/Sub-Consultant ("Subcontractor") Goals could be applied. Due to insufficient subcontracting/subconsultant opportunities and/or insufficient availability of M/WBE certified firms, SMBR has assigned no subcontracting goals for this Solicitation. However, Offerors who choose to use Subcontractors must comply with the City's M/WBE Procurement Program as described below. Additionally, if the Contractor seeks to add Subcontractors after the Contract is awarded, the Program requirements shall apply to any Contract(s) resulting from this Solicitation.

Instructions:

- a.) Offerors who do not intend to use Subcontractors shall check the "NO" box and follow the corresponding instructions.
- b.) Offerors who intend to use Subcontractors shall check the applicable "YES" box and follow the instructions. **Offers that do not include the following required documents shall be deemed non-compliant or nonresponsive as applicable, and the Offeror's submission may not be considered for award.**

NO, I DO NOT intend to use Subcontractors/Sub-consultants.

Instructions: Offerors that do not intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form) and include it with their sealed Offer.

YES, I DO intend to use Subcontractors /Sub-consultants.

Instructions: Offerors that do intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form), and follow the additional Instructions in the (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan). Contact SMBR if there are any questions about submitting these forms.

Offeror Information			
Company Name	Chameleon Industries Inc.		
City Vendor ID Code	75-2853080		
Physical Address	313 S Bryan Beltline		
City, State Zip	Mesquite, TX 75185		
Phone Number	513.615.3808	Email Address	info@chameleonindustriesinc.co
Is the Offeror City of Austin M/WBE certified?	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES Indicate one: <input checked="" type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture		

Offeror Certification: I understand that even though SMBR did not assign subcontract goals to this Solicitation, I will comply with the City's M/WB Procurement Program if I intend to include Subcontractors in my Offer. I further agree that this completed **Subcontracting/Sub-Consultin Utilization Form**, and if applicable my completed **Subcontracting/Sub-Consulting Utilization Plan**, shall become a part of any Contract I ma be awarded as the result of this Solicitation. Further, if I am awarded a Contract and I am not using Subcontractor(s) but later intend to ad Subcontractor(s), before the Subcontractor(s) is hired or begins work, I will comply with the City's M/WBE Procurement Program and submit th **Request For Change** form to add any Subcontractor(s) to the Project Manager or the Contract Manager for prior authorization by the City an perform Good Faith Efforts (GFE), if applicable. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consultin Utilization Plan**, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begi work, unless I first obtain City approval of my **Request for Change** form. I understand that, if a Subcontractor is not listed in r **Subcontracting/Sub-Consulting Utilization Plan**, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontract or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form.

Jason L. Garza Vice President

Jason L. Garza 15 July 2017

Name and Title of Authorized Representative (Print or Type)

Signature/Date



Minority Business Enterprise Certification

Chameleon Industries, Inc.

has filed with the Agency an Affidavit as defined by NCTRCA M/WBE Policies & Procedures and is hereby certified to provide service(s) in the following areas:

NAICS-325110: Petrochemical Manufacturing

This Certification commences August 10, 2015 and supersedes any registration or listing previously issued. This certification must be updated every two years by submission of an Annual Update Affidavit. At any time there is a change in ownership, control of the firm or operation, notification must be made immediately to the North Central Texas Regional Certification Agency for eligibility evaluation.

Certification Expiration: August, 20 17

Issued Date: August, 20 15

CERTIFICATION NO. HMMB37174N0817

Certification Administrator



CHAMELEON INDUSTRIES INC.
Current DOT number: 873497



Aluminum Sulfate, Solution (Alum)

Safety Data Sheet



SECTION 1 – PRODUCT AND COMPANY IDENTIFICATION

Product Name: Aluminum Sulfate, Solution
Other Name(s): Alum
Chemical Family: Inorganic, salt
Recommended Use: Water treatment coagulant/flocculent, papermaking pH control
Manufacturer: Chameleon Industries, Inc., P.O. Box 853027, Mesquite, TX 75185
More Information: *Customer Service:* 972.880.1493 (Monday-Friday, 8:00am-5:00pm)
Email: info@chameleonindustriesinc.com
Emergency: call CHEMTREC, 1.800.424.9300 (24hr/day, 7 days/week)

SECTION 2 – HAZARDS IDENTIFICATION

Classification: Skin Irritant 2, Eye Irritant 2A, Corrosion 1
Signal Word: Warning
Hazard Statement: May cause skin irritation; Causes serious eye irritation; Corrosive to metals
Symbol(s): Exclamation mark, Corrosive



Precautionary Statements

Prevention: Wash hands, along with any other body parts that may have been exposed, thoroughly after handling. Wear protective gear to prevent contact with skin (Rubber gloves, aprons, slicker suit). Wear eye protection/face protection (clear goggles and face shield). Keep only in original container.

Response: If on skin: Wash with plenty of water. If skin irritation occurs: Get medical advice/attention. Refer to first-aid measures (section 4) for any specific treatment. Take off contaminated clothing and wash it before reuse. If in eyes: Rinse cautiously with water for several minutes. Remove contact lenses, if present and easy to do. Continue rinsing. If eye irritation persists: get medical attention. Absorb spillage to prevent material damage.

Storage: Store in compatible containers such as polypropylene, polyethylene, PVC, or 316 SS

Other Hazards: Ingestion or inhalation not recommended and could present hazards not otherwise classified.

SECTION 3 – COMPOSITION/INFORMATION ON INGREDIENTS

Component	CAS No.	Weight Percent
Water	7732-18-5	50-52%
Aluminum Sulfate	10043-01-3	48-50%

SECTION 4 – FIRST AID MEASURES

Eye Contact: Immediately flush eyes for at least 30 minutes. Remove contact lenses if worn. Get medical attention if irritation persists.

Skin Contact: Wash skin with soap and water. Remove contaminated clothing and shoes. If irritation develops, get medical attention.

Inhalation: If adverse effects occur, relocate to fresh air. Give artificial respiration if not breathing. If difficulty breathing, give oxygen and get medical attention.

Ingestion: Do not induce vomiting. Consume large quantities of water. Get medical attention immediately.

SECTION 5 – FIRE FIGHTING MEASURES

Flammable Properties:	Negligible fire hazard. Not flammable.
Extinguishable Media:	No unsuitable extinguishing media known.
Explosion Limits:	
<i>Impact Sensitivity:</i>	Not sensitive
<i>Static Discharge Sensitivity:</i>	Not sensitive
Protective Equip & Precaution:	Wear self-contained breathing apparatus (SCBA) and full protective equipment. Poisonous gases may be produced in fire (aluminum and sulfur oxides). Use water spray to keep containers cool.

SECTION 6 – ACCIDENTAL RELEASE MEASURES

Spill or Other Release:	Stop leak if possible without personal risk. Dilute small spills or leaks cautiously with water. Large spills should be absorbed with sand, soda ash, or limestone. Adequate ventilation is required if soda ash or limestone is used, due to consequent release of carbon dioxide gas. Dispose of residue in accordance with applicable regulations.
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SECTION 7 – HANDLING AND STORAGE

Handling:	Avoid contact with eyes, skin, and clothing. Avoid breathing vapors or mist. Wash thoroughly after handling.
Storage:	Keep container tightly sealed when not in use. Store in cool, dry, well ventilated areas. Keep separated from incompatible substances.

SECTION 8 – EXPOSURE CONTROLS/PERSONAL PROTECTION

Component Exposure Limits:	Aluminum Sulfate - 2mg/m ³ (ACGIH TLV and OSHA PEL)
Ventilation:	Provide local exhaust to keep airborne concentrations below exposure limits
Personal Protective Equipment:	
<i>Eyes/Face:</i>	Wear splash resistant safety goggles. Provide an emergency eye wash fountain and quick drench shower in the work area.
<i>Skin:</i>	Wear appropriate chemical resistant clothing and gloves. If prolonged or repeated contact is anticipated, all clothing should be impervious to liquid.
<i>Respiratory:</i>	If workplace conditions warrant respirator use a respiratory protection program that meets OSHA 1910.134 and ANSI Z88.2 or federal requirement.

SECTION 9 – PHYSICAL AND CHEMICAL PROPERTIES

Appearance:	Colorless, light green or light amber liquid
Physical State:	Liquid
Odor:	Negligible odor
Chemical Formula:	~48.5% Al ₂ (SO ₄) ₃ 14H ₂ O in water
pH:	1.8 – 2.5
Specific Gravity:	1.31 – 1.34
Viscosity:	25cps @ 68°F / 20°C
Density:	11.1 lb/gal
Flash Point:	Not applicable
Boiling Point:	228°F / 109°

SECTION 9 – PHYSICAL AND CHEMICAL PROPERTIES (cont)

Melting Point:	9°F / -13°C
Flammability:	Not applicable
Autoignition Temperature:	Not applicable
Decomposition Temperature:	1400°F
Explosive Limits:	No information available
Evaporation Rate:	Not determined
Vapor Pressure:	Not applicable
Vapor Density:	Not applicable
%VOC:	0.0
Molecular Weight:	594 for Al ₂ (SO ₄) ₃ 14H ₂ O
Water Solubility:	Complete (100%)

SECTION 10 – STABILITY AND REACTIVITY

Chemical Stability:	Stable at normal temperatures and pressure.
Incompatible Products:	Alkalis and water reactive materials cause violent exothermic reactions. Metals may be corrosive in the presence of moisture.
Hazardous Decomposition Products:	Thermal oxidative decomposition occurs at temperatures greater than 1400°F and can produce sulfur oxides. These are toxic, corrosive, and act as oxidizers.
Possibility of Hazardous Reactions:	Will not occur.

SECTION 11 – TOXICOLOGICAL INFORMATION

Acute Toxicity:	The acute oral LD50 is greater than 5,000 mg/kg.
Chronic Toxicity:	The acute oral LD50 is greater than 5,000 mg/kg.
Symptoms of Overexposure:	May cause skin and eye irritation. If inhaled, may cause headaches, nausea, and respiratory irritations.
Carcinogenicity:	Not listed as a carcinogen by NTP, IARC, or OSHA.
Other Possible Health Hazards:	The common recognized injury from Aluminum Sulfate is local tissue irritation. The irritating action is often from hydrolysis to form sulfuric acid and may occur from ingestion, skin or eye contact, or inhalation of dusts and mists. Remove victim from contaminated area.
Eye & Skin:	May cause corneal burns or severe irritation in eyes. Fumes or mists may cause irritation or burns to skin.
Ingestion:	Oral and gastrointestinal irritation. Local tissue damage. Nausea, vomiting, diarrhea, and gastrointestinal bleeding may follow. Can be fatal if swallowed in sufficient quantities.
Inhalation:	Irritation of the respiratory system. Long term exposure may cause bronchial irritation, coughing, and bronchial pneumonia. Medical conditions generally aggravated are acute and chronic respiratory diseases.
Routes of Entry:	Ingestion, skin or eye contact, or inhalation of dusts and mists.

SECTION 12 – ECOLOGICAL INFORMATION

Ecotoxicity:	None of the material components are known to be hazardous to the environment or not degradable in waste water treatment plants.
Aquatic Toxicity - Freshwater Fish:	Aluminum Sulfate, LC50 – 100mg/L, Carassius auratus 96hr
	Aluminum Sulfate, LC50 – 37mg/L, Gambusia affinis 96hr
<i>Invertebrate:</i>	Aluminum Sulfate, EC50 – 136mg/L, Daphnia magna 15min
<i>Freshwater Algae:</i>	No data available.
Persistence and Degradability:	Can be eliminated from water by precipitation or flocculation
Bioaccumulation:	No data available.
Mobility in Environmental Media:	No data available.
Other Adverse Effects:	Aluminum Sulfate, 14ppm, Freshwater Fundulus 36hr
	Aluminum Sulfate, 235ppm, Mosquito fish 96hr
	Aluminum Sulfate, 250ppm, Largemouth Bass 96

SECTION 13 – DISPOSAL CONSIDERATIONS

Waste Disposal Methods:	Dispose of waste in accordance with all federal, state, and local regulations.
Component Waste Numbers:	The U.S. EPA has not published waste numbers for this product's components.
Contaminated Packaging:	Empty containers should be taken for local recycling, recovery or waste disposal

SECTION 14 – TRANSPORT INFORMATION

US DOT & TDG - Shipping Name:	Environmentally Hazardous Substance, liquid, n.o.s. (contains Aluminum Sulfate)
<i>Hazard Class:</i>	9
<i>UN No.:</i>	UN3082
<i>Packing Group</i>	PGIII

SECTION 15 – REGULATORY INFORMATION

U.S. Federal Regulations: Material (10043-01-3) contains one or more chemicals required to be identified under SARA Section 302 (40 CFR 355 Appendix A), SARA Section 311/312 (40 CFR 370.21), SARA Section 313 (40 CFR 372.65), CERCLA (40 CFR 302.4), TSCA 12(b), and/or require an OSHA process safety plan.

SARA 311/312:	Immediate	Delayed	Fire	Pressure	Reactivity
	Yes	No	No	No	No

NFPA: Health: 1 - Flammability: 0 - Instability: 1



SECTION 16 – OTHER INFORMATION

Current Issue Date:	1 April 2016
Previous Issue Date:	1 June 2015
Revision Summary:	This document has been prepared in accordance with the SDS requirements of the OSHA Hazard Communication Standard 29 CFR 1910.1200.

Disclaimer: All information, statements, data, advice and/or recommendations, including, without limitation, those relating to storage, loading/unloading, piping and transportation (collectively referred to herein as "information") are believed to be accurate and reliable. However, no representation or warranty, express or implied, is made as to its completeness, accuracy, fitness for a particular purpose or any other matter, including, without limitation, that the practice or application of any such information is free of patent infringement or other intellectual property misappropriation. Chameleon Industries Inc. is not engaged in the business of providing technical, operational, engineering or safety information for a fee, and, therefore, any such information provided herein has been furnished as an accommodation and without charge. All information provided herein is intended for use by persons having requisite knowledge, skill and experience in the chemical industry. Chameleon Industries Inc. shall not be responsible or liable for the use, application or implementation of the information provided herein, and all such information is to be used at the risk, and in the sole judgment and discretion, of such persons, their employees, advisors and agents. This SDS is to be utilized solely as a reference document and it is not to be used to satisfy the distribution requirements of OSHA's Hazard Communication nor Canada's Controlled product Regulation.

END OF SAFETY DATA SHEET



FDPH.MH28311 Drinking Water Treatment Chemicals

Page Bottom

Drinking Water Treatment Chemicals

[See General Information for Drinking Water Treatment Chemicals](#)

CHAMELEON INDUSTRIES INC
PO BOX 853027
MESQUITE, TX 75185 USA

MH28311

NSF/ANSI 60

Plant at: Corsicana, TX

Trade Dsg	Category	Max Use Level (mg/L)
Aluminum Sulfate [*Al]		
Alum	Coagulation and Flocculation Products	150
Alum C [*Cu]	Coagulation and Flocculation Products	150
Aluminum Sulfate "C" [*Cu]	Coagulation and Flocculation Products	150
CI 3002	Coagulation and Flocculation Products	140
CI 3007	Coagulation and Flocculation Products	140
CI 3102	Coagulation and Flocculation Products	140
CI 3103	Coagulation and Flocculation Products	140
CI 3107	Coagulation and Flocculation Products	140
CI 3108	Coagulation and Flocculation Products	140
CI 3203	Coagulation and Flocculation Products	140
CI 3204	Coagulation and Flocculation Products	140
CI 3208	Coagulation and Flocculation Products	140
CI 3209	Coagulation and Flocculation Products	140
CI 3302	Coagulation and Flocculation Products	140
CI 3304	Coagulation and Flocculation Products	140
CI 3307	Coagulation and Flocculation Products	140
CI 3309	Coagulation and Flocculation Products	140
CI 3403	Coagulation and Flocculation Products	140
CI 3404	Coagulation and Flocculation Products	140
CI 3408	Coagulation and Flocculation Products	140
CI 3409	Coagulation and Flocculation Products	140
CI 3502	Coagulation and Flocculation Products	140
CI 3503	Coagulation and Flocculation Products	140

CI 3504	Coagulation and Flocculation Products	140
CI 3507	Coagulation and Flocculation Products	140
CI 3508	Coagulation and Flocculation Products	140
CI 3509	Coagulation and Flocculation Products	140
CI 3707	Coagulation and Flocculation Products	50
CI 3708	Coagulation and Flocculation Products	50
CI 3709	Coagulation and Flocculation Products	50
CI 3727	Coagulation and Flocculation Products	50
CI 3728	Coagulation and Flocculation Products	50
CI 3729	Coagulation and Flocculation Products	50
CI 3747	Coagulation and Flocculation Products	50
CI 3748	Coagulation and Flocculation Products	50
CI 3749	Coagulation and Flocculation Products	50
CI 3767	Coagulation and Flocculation Products	50
CI 3768	Coagulation and Flocculation Products	50
CI 3769	Coagulation and Flocculation Products	50
CI 4707	Coagulation and Flocculation Products	50
CI 4708	Coagulation and Flocculation Products	50
CI 4709	Coagulation and Flocculation Products	50
CI 4727	Coagulation and Flocculation Products	150
CI 4728	Coagulation and Flocculation Products	50
CI 4729	Coagulation and Flocculation Products	50
CI 4747	Coagulation and Flocculation Products	50
CI 4748	Coagulation and Flocculation Products	50
CI 4749	Coagulation and Flocculation Products	50
CI 4767	Coagulation and Flocculation Products	50
CI 4768	Coagulation and Flocculation Products	50
CI 4769	Coagulation and Flocculation Products	50
CI 5707	Coagulation and Flocculation Products	50
CI 5708	Coagulation and Flocculation Products	50
CI 5709	Coagulation and Flocculation Products	50
CI 5727	Coagulation and Flocculation Products	100
CI 5728	Coagulation and Flocculation Products	50
CI 5729	Coagulation and Flocculation Products	50
CI 5747	Coagulation and Flocculation Products	50
CI 5748	Coagulation and Flocculation Products	50
CI 5749	Coagulation and Flocculation Products	50
CI 5767	Coagulation and Flocculation Products	50
CI 5768	Coagulation and Flocculation Products	50
CI 5769	Coagulation and Flocculation Products	50

Sulfuric Acid	Coagulation and Flocculation Products	150
Liquid Ammonium Sulfate	Disinfection and Oxidation	62.5

Plant at: Odessa, TX

Trade Dsg	Category	Max Use Level (mg/L)
Aluminum Sulfate [*Al]		
Alum	Coagulation and Flocculation Products	150
Alum C [*Cu]	Coagulation and Flocculation Products	150
Aluminum Sulfate "C" [*Cu]	Coagulation and Flocculation Products	150
CI 3002	Coagulation and Flocculation Products	140
CI 3007	Coagulation and Flocculation Products	140
CI 3102	Coagulation and Flocculation Products	140
CI 3103	Coagulation and Flocculation Products	140
CI 3107	Coagulation and Flocculation Products	140
CI 3108	Coagulation and Flocculation Products	140
CI 3203	Coagulation and Flocculation Products	140
CI 3204	Coagulation and Flocculation Products	140
CI 3208	Coagulation and Flocculation Products	140
CI 3209	Coagulation and Flocculation Products	140
CI 3302	Coagulation and Flocculation Products	140
CI 3304	Coagulation and Flocculation Products	140
CI 3307	Coagulation and Flocculation Products	140
CI 3309	Coagulation and Flocculation Products	140
CI 3403	Coagulation and Flocculation Products	140
CI 3404	Coagulation and Flocculation Products	140
CI 3408	Coagulation and Flocculation Products	140
CI 3409	Coagulation and Flocculation Products	140
CI 3502	Coagulation and Flocculation Products	140
CI 3503	Coagulation and Flocculation Products	140
CI 3504	Coagulation and Flocculation Products	140
CI 3507	Coagulation and Flocculation Products	140
CI 3508	Coagulation and Flocculation Products	140
CI 3509	Coagulation and Flocculation Products	140
CI 3707	Coagulation and Flocculation Products	50
CI 3708	Coagulation and Flocculation Products	50
CI 3709	Coagulation and Flocculation Products	50
CI 3727	Coagulation and Flocculation Products	50
CI 3728	Coagulation and Flocculation Products	50
CI 3729	Coagulation and Flocculation Products	50
CI 3747	Coagulation and Flocculation Products	50

CI 3748	Coagulation and Flocculation Products	50
CI 3749	Coagulation and Flocculation Products	50
CI 3767	Coagulation and Flocculation Products	50
CI 3768	Coagulation and Flocculation Products	50
CI 3769	Coagulation and Flocculation Products	50
Liquid Ammonium Sulfate	Disinfection and Oxidation	62.5

[*Al] - The finished drinking water shall be monitored to verify that the level of aluminum does not exceed 2 mg/L.

[*Cu] - This chemical contains copper and can increase the amount of copper in the finished drinking water. The finished drinking water shall be monitored to verify that levels of copper do not exceed 1.3 mg/L.

Last Updated on 2013-10-04

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AUSTIN WATER UTILITY

***** NOTICE OF CHEMICAL DELIVERY *****

CHEMICAL VENDOR NAME: _____

TRUCKING COMPANY NAME: _____

COMPANY CONTACT PHONE: _____ DATE OF THIS NOTICE: _____

TYPE OF CHEMICAL TO BE DELIVERED: _____

DELIVERY INFORMATION:

DESTINATION: _____ TIME DELIVERY LEFT COMPANY: _____

ESTIMATED ARRIVAL TIME: _____

TRUCK DESCRIPTION:

MAKE: _____ MODEL: _____ COLOR: _____

TRUCK (front) LICENSE PLATE #: _____ TANK SECURITY SEAL #: _____

TRUCK / TANKER #: _____ / _____

DRIVER & COMMERCIAL DRIVER'S LICENSE (CDL) INFORMATION:

DRIVER NAME (not necessary at this time) DRIVER CDL NUMBER & EXPIRATION DATE

DRIVER CONTACT PHONE CDL ENDORSEMENT ON LICENSE? YES NO
Grde One

CDL ENDORSEMENT CODE: H or X or N
Grde One

(This section for AWU use only)

Actual arrival time: _____ Is CDL endorsement code appropriate for this vehicle*? YES NO
Grde One

I have verified the information submitted on this form with actual conditions at delivery:

AWU Staff Signature: _____ Printed Name: _____

* Endorsement letters: N = Required for tanker vehicle
H = Required for transporting hazardous materials that require display of placards on truck/trailer
X = Combines N and H; Required for operating tanker vehicles carrying hazardous materials

This form should be retained and submitted with the related payment materials to AWU Accounts Payable.

NOTE: THIS FORM SHALL BE FAXED TO DELIVERY LOCATION SITE SUPERVISOR WHEN DRIVER HAS BEEN DISPATCHED FOR DELIVERY TO AUSTIN WATER UTILITY DELIVERY SITE. PLEASE CALL (512) 972-0310 WITH ANY QUESTIONS OR CONCERNS REGARDING THIS FORM.

(AWU REVISED 09/15/2013es, Form 2013c)